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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72- Misc.

72-574

LEE T. SELLARS,

Petitioner,

v.

COMMITTEE ON ADMISSIONS of the District of Columbia Court of Appeals,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

FRANK & FRANK, ESQS.
Attorneys for Petitioner
IRVING FRANK
Of Counsel
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New York, N. Y. 10007
212-962-5387

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72- Misc.

LEE T. SELLARS,

Petitioner,

v.

COMMITTEE ON ADMISSIONS of the District of Columbia Court of Appeals,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

Petitioner prays that a writ of certiorari issue to review the judgment of the District of Columbia Court of Appeals entered July 11, 1972.

Citation To Opinions Below

The Order of the District of Columbia Court of Appeals denying the petitioner's petition for review of the decision of the Committee on Admissions is attached

hereto as (1a)* and is not yet reported in either the Official or Unofficial Reports.

Jurisdiction

The judgment of the Court of Appeals was entered on July 11, 1972. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3), or in the alternative 28 U.S.C. § 1254(1).

The Questions Presented

1. Whether the rights of the petitioner under the Constitution were infringed by the refusal of the Committee on Admissions to allow the petitioner to take the July, 1972 bar examination for admission to practice as an attorney in the District of Columbia, when at the time the petitioner first applied to take the examination in 1971 he was found to be eligible, having graduated from the Law School of Duquesne University, but the respondent refused permission for him to take the July, 1972 examination on the grounds that under a newly promulgated Rule the petitioner was ineligible because, at the time of his graduation the Law School of Duquesne University was not then on the approved list of the American Bar Association?

2. Whether the District of Columbia and its Committee on Admissions could enforce its rule, on a retrospective basis, requiring that all candidates for admisison to the bar examinations to be graduates of law schools approved by the American Bar Association?

3. Whether the application of Rule No. 3 by the Committee on Admissions of the District of Columbia Court

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* Matter in ( ) refer to pages of the Appendix.

of Appeals was arbitrary and capricious, in denying the applicant the opportunity to take the July, 1972 bar examination, when it was shown, that at the time of the petitioner's graduation from law school in 1935 he was then eligible to take the bar examination both in the State of Pennsylvania and in the District of Columbia and there was no requirement by the District of Columbia that a law school had to be approved by the American Bar Association?

Constitutional Provisions Involved

The constitutional provisions involved in this petition are the due process clause and the equal protection clause of the Fourteenth Amendment; and the due process clause of the Fifth Amendment.

Statement

1. This is a petition for a writ of certiorari to the District of Columbia Court of Appeals. The petitioner herein filed an application to take the July, 1972 bar examination to be given by the Committee on Admissions of the District of Columbia Court of Appeals. The petitioner was informed by Anthony Nigro, Secretary of the Committee on Admissions, by a letter dated May 22, 1972 (8a) that he did not possess the necessary qualifications for admission under Rule 3 of the Rules of the Committee on Admissions. By a letter dated May 25, 1972, the petitioner requested the committee to reconsider his application, claiming that the application of Rule 3 to his case on a literal basis should not be made because it would, in effect, be retrospective (7a). On May 31, 1972 the Committee's position denying the application was restated by the Secretary (6a).

On June 8, 1972, the petitioner made a formal petition to the Committee on Admissions. On June 23, 1972, the Committee, by its Secretary, again notified the petitioner that the decision of the Committee after review, remained unchanged (5a). The petitioner then filed a petition in the District of Columbia Court of Appeals requesting a review of the decision made by the Committee on Admissions appointed by the Court (3a-7a). As noted above, the petition was denied without opinion (1a).

It must be noted, that the petitioner herein does not seek an Order from this court permitting him to practice law without having the necessary qualifications. Rather, the relief he requests is from the oppressive, arbitrary and capricious application of Rule 3 which denied him the opportunity to take the bar examination on the grounds that he is ineligible, whereas in fact, at the time of his graduation there was no such requirement. *Ex Parte Garland*, 71 U.S. (4 Wallace) 333, 18 L. Ed. 366, 370, 377 (1866).

The petitioner is 63 years of age. He is a graduate of Ohio University, B.A. *cum laude* (1931). He was admitted to the School of Law of Duquesne University in 1931. He was graduated with an LL.B degree in 1935. While still young and green, he took the Pennsylvania Bar Examination in the Summer of 1935 and failed. In 1971, he applied for permission to take the June, 1971 bar examination given in the District of Columbia. In 1971 the petitioner had submitted to the Committee on Admissions and Grievances of the United States District Court for the District of Columbia, a letter from the Assistant Dean of the Law School of Duquesne University dated May 24, 1971 (10a) setting forth the caliber of the school and its graduates. He was allowed to take the 1971 bar examination because he had been eligible to take the examination at the time he graduated (9a). Mr. Sellars did

sit for the June, 1971 bar examination. He passed 3 out of 6 parts (passing 4 out of six is required for admission). He then filed an application to sit for the examination again in July, 1972, and proceeded to take an extensive review course given in the District of Columbia. The Committee on Admissions, however, notwithstanding that he had previously been eligible, refused to allow him to take the July, 1972 examination (8a, 6a). The Court of Appeals rendered its decision on July 11, 1972 (1a) the day preceding the examination, denying his petition. If this decision is reversed, the petitioner intends to sit for the next examination.

After the petitioner had failed the 1935 Pennsylvania bar examination, he became a successful radio commentator, lecturer, writer and editor. He was listed in "Who's Who In America". In the early 1960's, he developed cancer of the larynx and lost a vocal cord. This effectively put an end to his speaking career. By 1965, he was well enough to go back to work and he turned to his training in the law. He began to assist persons in their applications before the Immigration and Naturalization Service. In this work he could function extremely well without having to worry about being a great, or even a near-great orator. In 1971, he was notified by the Immigration and Naturalization Service that they would no longer permit him to represent the public unless he was admitted to practice as an attorney. To require the petitioner, who is now approaching the age where in many industries retirement is mandatory, to repeat a complete law school education in order to sit for the bar examination would indeed be a great and unnecessary hardship.

It would appear that the action of the Committee in refusing permission to the petitioner herein was arbitrary and capricious. See: *England* v. *Louisiana State Board of Medical Examiners*, 259 F. 2d 622, rehearing denied 263 F. 2d 661 (CA-5) Cert. denied 359 U.S. 1012, 3 L. Ed. 2d

1036, 79 S. Ct. 1149. A State (the District of Columbia) cannot exclude a person from the practice of law or from any other occupation in a manner that contravenes the due process or equal protection clauses of the Fourteenth Amendment. *Dent* v. *West Virginia,* 129 U.S. 114, 32 L. Ed. 623, 9 Sup. Ct. 231.

The petitioner does not deny the propriety of the rule, as stated in the cases cited above, that the District of Columbia has an interest and may well prescribe the requirements to sit for the District of Columbia bar examination. He does not deny that it has the power to require, on a *prospective basis,* that the applicant show he graduated from a school which was on a list approved by the American Bar Association. See: *Rosenthal* v. *State Bar Examining Committee,* 116 Conn. 409, 165 Atl. 211, 87 A.L.R. 991 (1933); *Nebraska ex rel Ralston* v. *Turner,* 141 Neb. 556, 4 N.W. 2d 302, 144 A.L.R. 138, 150-182 (1942). In *Nebraska* v. *Turner* (*supra*) the Supreme Court of Nebraska promulgated a rule that in order to take the bar examination in Nebraska an applicant would have to show that he was a graduate of a reputable school, one on the list approved by the Court. After the rule was promulgated, the applicant commenced study at a school that was not on the approved list. The Legislature then passed a law stating that all law schools in the State of Nebraska are deemed to be reputable and that the graduate of any law school in the state would be eligible to take the examination. The Court struck the statute down as unconstitutional and an invasion of the right of the Court to set the necessary standards. The Court was careful to point out that the applicant had commenced school after the adoption of the Court rule and before the enactment of the statute. It held that the applicant had been on notice and therefore the application to take the examination was denied. In *Application of Saunders,* 295 F. Supp. 265 (D.C.

V.I., 1968) the District Court refused to exercise its discretion where it was shown that the applicant enrolled in a LaSalle Extension University correspondence course, a year after the rule was enacted requiring graduation from an accredited law school. The Court said the petitioner had more than a year's notice that he could not become a member of the Virgin Islands Bar, unless he was graduated from an accredited law school. This is markedly different from the case at bar. In the present case, the requirement of graduation from a school on the American Bar Association approved list came after the petitioner had graduated, and had been eligible to take the examination at the time of his graduation.

The lapse of 37 years should not prejudice the petitioner's application. Having once passed a hurdle necessary to be overcome, before the next step can be taken, the applicant should not in good conscience be relegated to the bottom of the hill again like Sisyphus. In *Willner* v. *Committee on Character and Fitness*, 373 U.S. 96, 10 L. Ed. 2d 224, 83 S. Ct. 1175, 2 A.L.R. 3d 1254, this Court granted certiorari many years after the Committee on Character and Fitness, and indeed all of the Courts having jurisdiction thereof in the State of New York had denied an applicant's right to practice law. This Court remanded the case, based upon a new application to the Committee, in which he requested a hearing with respect to "his moral fitness". In the case at bar, neither the Committee, nor the District of Columbia Court of Appeals denied the application on the grounds that there was too long a lapse of time between the date of his graduation, and the time he applied to sit for the examination. They arbitrarily refused to permit him to take the examination. See: *Schware* v. *Board of Bar Examiners*, 353 U.S. 232, 1 L. Ed. 2d 796, 77 Sup. Ct. 752, 64 A.L.R. 2d 288.

The application of Rule 3 to the petitioner herein has no reasonable basis. It is arbitrary and capricious and, under all of the circumstances, should not have been applied in the literal manner in which it was applied here. *Dent* v. *State of West Virginia*, 129 U.S. 114, 121, 122, 9 S. Ct. 231, 233, 32 L. Ed. 623 (1889). *England* v. *Louisiana, supra. Ex parte Garland, supra.*

The District of Columbia Court of Appeals only recently ruled that the Federal Civil Service Commission, based upon an Act of Congress, could not deny an alien the right to take a civil service examination solely on the grounds that the applicant was an alien. *Jalil* v. *Haughton*, 460 Fed. 2d 923 (CA, DC—1972). In doing so, it followed *Graham* v. *Richardson*, 403 U.S. 365, 91 S. Ct. 1848, 29 L. Ed. 2d 534 (1971). In *de Rodulfa* v. *United States*, 461 Fed. 2d 1240, 1247 (CA, DC 1972) the Court of Appeals of the District of Columbia reiterated the rule concerning the application of laws on a *prospective*, rather than an *retrospective*, basis. Nevertheless, in the case at bar it affirmed the action of the Committee on Admissions which had applied this rule to the petitioner on a retrospective basis.

In *Ex parte Garland* (supra), the applicant had been admitted to practice in the Supreme Court of the United States in 1860. In 1861, the State of Arkansas seceded from the Union. In 1862, Congress decreed that in order to practice before the Court, an oath would have to be taken by any applicant for admission to the bar. In 1865, this oath was expanded to include not only an oath that he would uphold the Constitution of the United States, and the Government, etc., but also that he had never in the past voluntarily borne arms against the United States, etc. During the war between the states, Mr. Garland had been an active "rebel".

After the war, Mr. Garland received a full Presidential pardon for the activities in which he was engaged during the Civil War. With the pardon in hand, he applied to the Supreme Court to be permitted to practice again. The Court in reviewing the oath and the Act of Congress upon which it was based stated at Page 377, "all enactments of this kind partake of the nature of bills of pains and penalties, and are subject to the constitutional inhibition against the passage of bills of attainder, under which general designation they are included". The Court went on to rescind the amendment of the second rule of the Court which required the oath prescribed by the act of January 24, 1965, on the above grounds and pointed out that *ex post facto* legislation was repugnant to the Constitution.

CONCLUSION

The application of the rule on a retrospective basis as applied to the petitioner in this case, and to all others who may have graduated from schools that were not on a list as being approved by the American Bar Association, prior to the date when the rule was enacted, is arbitrary and capricious. The petition for the Writ of Certiorari should be granted.

Dated: New York, N.Y.
October 6, 1972

FRANK & FRANK
By: IRVING FRANK,
A Member of the Firm
11 Park Place
New York, N.Y. 10007

[APPENDICES FOLLOW]

APPENDIX A

Order of the District of Columbia Court of Appeals

(Filed—July 11, 1972.)

DISTRICT OF COLUMBIA
COURT OF APPEALS

ALEXANDER L. STEVAS
Clerk

No. 2-72

JANUARY TERM, 1972

LEE T. SELLARS,

Petitioner,

v.

COMMITTEE ON ADMISSIONS of the District of Columbia Court of Appeals,

Respondent.

Before: Hood, Chief Judge, Kelly, Fickling, Kern, Gallagher, Nebeker, Pair, Reilly, and Yeagley, Associate Judges.

ORDER

On consideration of petitioner's petition for review of the decision of the Committee on Admissions, it is

Appendix A

ORDERED by the Court in banc that petitioner's aforesaid petition is denied.

BY THE COURT:

ANDREW M. HOOD
Andrew M. Hood,
Chief Judge.

Copies to:

Mr. Lee T. Sellars
Eleven Park Place
New York, N. Y. 10007

Kenneth Wells Parkinson, Esquire
Chairman, Committee on Admissions
1828 L Street, N.W.
Washington, D.C. 20036

Associate Judge Kern did not participate in the foregoing order.

APPENDIX B

Petition for Review of a Committee on Admissions Decision

DISTRICT OF COLUMBIA COURT OF APPEALS
WASHINGTON, D. C.

LEE T. SELLARS,

Petitioner,

vs.

KENNETH WELLS PARKINSON, JACOB A. STEIN, JEANNE L. DOBRES, WILLIAM C. GARDNER, JAMES A. HOURIHAN, CHARLES J. STEELE, all members of The Committee on Admissions,

Respondents.

To the Honorable Chief Judge and Associate Judges of Said Court:

I, Lee T. Sellars, 801 Gramatan Avenue, Mount Vernon, New York (presently residing at 2134 G Street, Washington, D. C. while taking a bar review course) respectfully petition your honorable court to review a decision of the Committee on Admissions denying me the privilege of sitting for the July 1972 bar examination.

For the June 1971 examination I was approved to take the exam by the then Committee of the District Court.

Appendix B

Their reasoning was, "because at the time of your graduation you would have been eligible."

Memorandum of law attached.

LEE T. SELLARS

Attached also:

Copies of pertinent correspondence

APPENDIX B-1

Memorandum of Law

(1) The Committee on Admissions denied my request to take the July bar examination stating that the Committee's Rule 3 was a bar thereto.

(2) I contend that Rule 3 does not apply to anyone who has already qualified to take the District of Columbia bar examination. When I finished law school in 1935 I was qualified to take the examination here.

(3) In 1935 there was no Rule 3 requiring one's law school to be approved by the American Bar Association; and a number of my classmates took the District of Columbia bar exam that year.

(4) To impose Rule 3 on me, who has been qualified to take the exam for the past 37 years, would have the effect of a retroactive law, and, like ex post facto laws on the criminal side, would violate due process by depriving me of a vested right.

(5) I do not seek any waiver of the present rules.

(6) I do sincerely and respectfully ask the Court to amend Rule 3 in order to clarify a latent ambiguity in that rule by indicating that it has no application to those candidates who had previously qualified.

(7) If I am not permitted to sit for the July examination my means of livelihood will be directly threatened.

APPENDIX B-2

Personal History of Lee T. Sellars

After graduation from Ohio University (cum laude) I entered Duquesne University School of Law in 1931 and completed the course in 1935, receiving an LL.B degree (later changed to Juris Doctoris). I failed the Pennsylvania bar examination in the summer of 1935.

By this time however I was embarked upon the career of a radio commentator, lecturer, writer and editor. This work continued happily, and I was listed in Who's Who in America for years—until the early sixties when cancer of the larynx developed and I lost a vocal cord. This ended my speaking career, and I looked to my original training, law, to earn a living.

I became an immigration lawyer in 1965 and have continued this practice to date. The Immigration Service has pointed out that I must pass a bar somewhere in order to continue my practice. Since I am dealing only with federal law as an immigration counsel I decided to take the D. C. bar examination. Since February 1971 I have earnestly reviewed the law with the purpose of passing the District of Columbia bar exam. To reach the peak required to pass such an exhaustive effort is no child's play for a fellow my age. But I sincerely think I am better prepared for the July exam than ever before in my life. I am in the midst of my third bar review course since February 1971. I must pass this examination. There is no alternative.

My office is located at 11 Park Place in Downtown, New York City. I am unusually successful in my "second career." I have been of real service to more people

in the past seven years than all my other years put together.

With the help of your Honorable Court and the Almighty I will be able to continue.

June 22, 1972

APPENDIX C

Letter from District of Columbia Court of Appeals (Committee on Admissions) to Lee T. Sellars Dated June 23, 1972

DISTRICT OF COLUMBIA COURT OF APPEALS
COMMITTEE ON ADMISSIONS
400 F Street, Northwest
Washington, D. C. 20001

KENNETH WELLS PARKINSON
Chairman

JACOB STEIN
Vice Chairman
JEANNE L. DOBRES
WILLIAM C. GARDNER
JAMES A. HOURIHAN
CHARLES J. STEELE

ANTHONY NIGRO
Secretary
727-1807

June 23, 1972

Mr. Lee T. Sellars
Eleven Park Place
New York, N. Y. 10007

Dear Mr. Sellars:

Your *Petition to the Committee on Admissions* of June 8, 1972, delivered to me on the same date, has been presented to the Committee on Admissions.

The Committee, after reviewing and considering the merits of your petition, has directed me to advise you

their decision as communicated to you on May 22, 1972, and May 31, 1972, remains unchanged.

I regret that I cannot give you a more favorable reply.

Very truly yours,

ANTHONY NIGRO
Anthony Nigro
Secretary

AN/mef

APPENDIX D

Letter from District of Columbia Court of Appeals (Committee on Admissions) to Lee T. Sellars Dated May 31, 1972

DISTRICT OF COLUMBIA COURT OF APPEALS
COMMITTEE ON ADMISSIONS
400 F Street, Northwest
Washington, D. C. 20001

KENNETH WELLS PARKINSON
Chairman
JACOB STEIN
Vice Chairman

JEANNE L. DOBRES
WILLIAM C. GARDNER
JAMES A. HOURIHAN
CHARLES J. STEELE

ANTHONY NIGRO
Secretary
727-1807

May 31, 1972

Mr. Lee T. Sellars
801 Gramatan Avenue
Mount Vernon, New York 10552

Dear Mr. Sellars:

This is to acknowledge your letter of May 25, 1972.

Kindly be advised that rejection of your application to take the July 1972 District of Columbia Bar Examination communicated to you by my letter of May 22, 1972 was authorized by the Committee on Admissions. The Committee convened a meeting expressly for the purpose of reviewing the applicability of Rule 3 to your situation.

Appendix D

There are no provisions contained in the *Rules of the District of Columbia Court of Appeals Governing the Bar of the District of Columbia* granting the Committee authority to waive requirements for admission to the bar examination.

I regret I cannot communicate a more favorable reply to you.

Very truly yours,

ANTHONY NIGRO
Anthony Nigro
Secretary

cc: Kenneth Wells Parkinson, Esquire
Chairman

AN/rb

APPENDIX E

Letter from Lee T. Sellars to District of Columbia Court of Appeals (Committee on Admissions), Dated May 25, 1972

11 Park Place
New York, N. Y. 10007

Mr. Anthony Nigro, Secretary
Committee on Admissions
District of Columbia Court of Appeals
400 F Street NW
Washington, D. C. 20001

Dear Mr. Nigro:

I have your letter of May 22 denying me permission to take the bar examination in July.

It seems to me your Rule 3 applies to current and future law students as a guide to the kind of background they need in order to qualify to take the D. C. examination. It cannot apply to a person who has already qualified—such as I.

When I finished law school in 1935 American Bar Association approval of law schools was not then the criterion for acceptability in most jurisdictions, including the District of Columbia. I was qualified therefore to take the D. C. examination in 1935. I contend if I was qualified then, I am qualified now.

Your interpretation of Rule 3 of the Rules on Admission for my particular case has the effect of retrospective law, and, like ex post facto laws on the criminal side, it violates due process if it deprives one of a vested right. I had a vested right upon graduation to take your examination in 1935 and nothing should deprive me of that right now.

Appendix E

I earn my livelihood by practicing before the Immigration Service. As I explained to you when I was in your office a few weeks ago, they now require me to become a member of the federal bar to continue my practice.

I trust you will take this matter up with your Committee immediately so the way may be cleared for me to take the July examination without resorting to judicial review.

Very truly yours,

LEE T. SELLARS
Lee T. Sellars

APPENDIX F

Letter from District of Columbia Court of Appeals (Committee on Admissions) to Lee T. Sellars Dated May 22, 1972

DISTRICT OF COLUMBIA COURT OF APPEALS
COMMITTEE ON ADMISSIONS
400 H Street, Northwest
Washington, D. C. 20001

KENNETH WELLS PARKINSON
Chairman

JACOB STEIN
Vice Chairman

JEANNE L. DOBRES
WILLIAM C. GARDNER
JAMES A. HOURIHAN
CHARLES J. STEELE

ANTHONY NIGRO
Secretary
727-1807

May 22, 1972

Mr. Lee T. Sellars
801 Gramatan Avenue
Mount Vernon
New York 10552

Dear Mr. Sellars:

After careful review of your application for admission to the District of Columbia Bar Examination which will be administered in July, I find you do not possess the necessary qualifications for admission.

Appendix F

Rule 3, *Rules of the Committee on Admissions*, a copy of which accompanied the examination application, requires applicants to be graduated from a law school currently approved by the American Bar Association.

Accordingly, your check #299 in the amount of $50.00 is returned herewith. Your application and accompanying documents are placed on file here as Court documents.

Very truly yours,

ANTHONY NIGRO
Anthony Nigro
Secretary

Enclosure

APPENDIX G

Letter from United States District Court for the District of Columbia (Committee on Admissions and Grievances) to Lee T. Sellars, Dated May 25, 1971

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA
COMMITTEE ON ADMISSIONS AND GRIEVANCES
Room 6409 United States Court House
Washington, D. C. 20001

EDMUND L. JONES,
Chairman

MILTON W. KING
PRESTON C. KING, JR.
JAMES FRANCIS REILLY
JOSEPH S. McCARTHY
ALAN KAY
WILLIAM C. GARDNER
PATRICIA ROBERTS HARRIS
PHILIP F. HERRICK

RALPH A. CURTIN
Secretary and Treasurer
426-7514

May 25, 1971

Mr. Lee T. Sellars
505 East 79 St.
New York, N.Y. 10021

Dear Sir:

This is to revoke my letter to you of May 11th last, and to advise that the Committee has approved your application to sit for the bar examination next month because at the time of your graduation you would have been eligible.

I am glad of this result, and request that you return your check for fee at your convenience.

Yours very truly,

RALPH A. CURTIN
Secretary

APPENDIX H

Letter from Associate Dean John J. Sciullo to United States District Court for the District of Columbia (Committee on Admissions and Grievances) Dated May 24, 1971

May 24, 1971

Ralph A. Curtin
Secretary and Treasurer
United States District Court
for the District of Columbia
Committee on Admissions and Grievances
Room 6409
United States Court House
Washington, D.C. 20001

Dear Mr. Curtin:

This letter is written on behalf of Lee T. Sellars of New York City who is applying for admissions to the District of Columbia. Mr. Sellars graduated from the Law School in 1935 in good standing. He had received a Bachelor of Arts degree in 1931 from Ohio University. I understand that Mr. Sellars' application to take the D.C. Bar has been rejected because he did not graduate in 1935 from a law school approved by the American Bar Association. It is true that Duquesne was not approved by the American Bar Association until 1960, but prior to that time it had been accredited by the Supreme Court of Pennsylvania and hundreds of our graduates had been admitted to practice before the highest court of most of our States. In fact, many of our graduates prior to 1960 have been elected and appointed to the Bench of State and Federal Courts. One of our most outstanding graduates, Austin L. Staley, was the Chief Justice of the Third Circuit Court

of Appeals until several years ago. I bring this to your attention because it seems unfair to deny Mr. Sellars the opportunity to take the Bar Exam because of the lack of accreditation of Duquesne in 1935. I can assure you that the standards set by the Pennsylvania Supreme Court in 1935 for accreditation were equal or higher than those set by the American Bar Association. I can further assure you that the scope and quality of Mr. Sellars' legal education was clearly the equivalent of our present legal education.

I sincerely hope that you and your committee could waive the requirement that Mr. Sellars be a graduate of an American Bar Association approved school.

Very truly yours,

John J. Sciullo
Associate Dean

JJS:mas
cc: Mr. Lee T. Sellars

FILE COPY

BRIEF FOR RESPONDENT IN OPPOSITION

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

Supreme Court, U. S.
FILED
NOV 16 1972
MICHAEL RODAK, JR., CLERK

No. 72-574

LEE T. SELLARS, *Petitioner*,

v.

COMMITTEE ON ADMISSIONS OF THE DISTRICT OF COLUMBIA COURT OF APPEALS, *Respondent*.

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

C. FRANCIS MURPHY,
Corporation Counsel, D. C.

RICHARD W. BARTON,
Assistant Corporation Counsel, D. C.

DAVID P. SUTTON,
Assistant Corporation Counsel, D. C.

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District Building,
Washington, D. C. 20004
Telephone: 629-3916

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-574

LEE T. SELLARS, *Petitioner*,

v.

COMMITTEE ON ADMISSIONS OF THE
DISTRICT OF COLUMBIA COURT OF APPEALS, *Respondent*.

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

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BRIEF FOR RESPONDENT IN OPPOSITION

QUESTIONS PRESENTED

Whether a rule of the Committee on Admissions of the District of Columbia Court of Appeals requiring that an applicant for admission to the bar be a graduate of a law school approved by the American Bar Association unconstitutionally curtails vested rights when applied to petitioner,

who, 37 years prior to promulgation of the rule, graduated from a law school not approved by the American Bar Association.

STATEMENT

Petitioner seeks review of the order of the District of Columbia Court of Appeals, in banc, upholding respondent's rejection of his application to take the District of Columbia bar examination because of his failure to have graduated from an approved law school, i.e., one approved by the American Bar Association (Petitioner's App. A).

Petitioner graduated from the Duquesne University School of Law in 1935. Duquesne's Law School was not then approved by the American Bar Association and did not become so approved until 1960 (Petitioner's App. H). In the summer of 1935, petitioner took and failed the Pennsylvania bar examination. He thereafter embarked on a career as a radio commentator, lecturer, writer, and editor, which he has since been compelled to abandon because of a physical disability injuriously affecting his speech. (Petitioner's App. B-2.)

In 1971 petitioner made application to take the District of Columbia bar examination scheduled for June of that year. At the time of his application, admission to the local practice of law was under the aegis of the Committee on Admissions and Grievances of the United States District Court for the District of Columbia rather than that of respondent. In spite of the circumstance that the law school attended by petitioner lacked approved status at the time of his graduation, the District Court Committee permitted him to sit for the District of Columbia bar examination because he would have been eligible to take such examination at the time of his graduation from Duquesne (Petitioner's App. G). In this regard, Rule 93(e) of the

Rules of the United States District Court for the District of Columbia, then in effect, provided in pertinent part that:

> "• • • In any instance in which reference herein is made to an 'approved law school', the Court or the Committee in its discretion may waive the requirements for work or study in any approved law school if the rules of this Court in effect at the time of the work or study by the applicant in law school did not provide for approval of law schools."

Petitioner failed the bar examination administered in June 1971 and subsequently failed the examination administered in January 1972. (Respondent's App. A, *infra.*) Thereafter, respondent replaced the District Court Committee as the local admissions committee. Such replacement became effective on April 1, 1972, by virtue of the District of Columbia Court Reform and Criminal Procedure Act of 1970 (hereinafter "the Court Reform Act"), P. L. 91-358, 84 Stat. 473, 597. The Court Reform Act authorized the District of Columbia Court of Appeals [1] to promulgate rules concerning, *inter alia,* the examination, qualification, and admission of persons to membership in its bar. 84 Stat. 521. Acting pursuant to that statutory authorization, the District of Columbia Court of Appeals established respondent as the new Committee on Admissions to the District of Columbia Bar and approved certain rules adopted by respondent, including Rule 3, which recites that:

> "An applicant who has been graduated from a law school currently approved by the American

[1] The overriding purpose of the Court Reform Act was to put the District's judicial system on a par with those of states and, under its terms, the District of Columbia Court of Appeals became "the highest court of the District of Columbia." 84 Stat. 475; *M. A. P.* v. *Ryan,* 285 A. 2d 310 (D. C. App., 1971); *United States* v. *Thompson,* 452 F. 2d 1333, 1342 (D. C. Cir., 1971).

> Bar Association or who shall be eligible to be graduated from an approved law school within 60 days of the date of the examination will be permitted to take the bar examination. However, under no circumstances shall an applicant be admitted to the bar without having first submitted to the Secretary of the Committee a certificate verifying that he has graduated from an approved law school."

It was on the basis of Rule 3 that respondent rejected petitioner's application to take the District of Columbia bar examination (Petitioner's App. D). Petitioner sought review of respondent's adverse ruling through a petition for review filed in the District of Columbia Court of Appeals. He asserted, in effect, that unless Rule 3 was construed to contain an exception like that embodied in former District Court Rule 93(e), set forth above, its application to him "would have the effect of a retroactive law" and "would violate due process by depriving * * * [him] of a vested right" (Petitioner's App. B-1). On July 11, 1972, that court denied the petition for review and on October 10, 1972, petitioner filed in this Court a petition for a writ of certiorari.

REASONS FOR DENYING THE WRIT

Petitioner advances no ground for review conceivably falling within the standards and considerations governing review on writ of certiorari prescribed by Rule 19 of the Rules of this Court. And see *Fields* v. *United States*, 205 U. S. 292, 296 (1907). The instant case involves nothing more than a District of Columbia rule of court whereby one seeking admission to the practice of law be a graduate of a law school approved by the American Bar Association,

and the application of that rule to one whose law school was not so approved until approximately 25 years following his graduation therefrom. The decision of the District of Columbia Court of Appeals upholding such a rule conflicts with no decision of this Court, a circuit court of appeals, or the highest court of any state. And when the case is considered in light of principles articulated by this Court, it will become readily apparent that petitioner has failed to present a question of gravity or general national importance sufficient to justify the issuance of the extraordinary writ he seeks.

Traditionally, matters concerning admission to the bar have been left to regulation by the highest court of a state. See *Schware* v. *Board of Bar Examiners*, 353 U. S. 232 (1957), cf. n. 1, *supra*. In *Schware*, the Court noted that a state may require high standards of qualification and proficiency for admission to its bar and that such standards will be judicially upheld as long as they have a rational connection with the applicant's fitness or capacity to practice law. 353 U. S. at 239. In subsequent decisions, this Court has made it plain that the limits of its review in cases such as the instant one are quite narrow and that the allowable range of administrative discretion exercised in connection with the promulgation of rules like that challenged here is correspondingly broad. See *Theard* v. *United States*, 354 U. S. 278, 281 (1957); *Martin* v. *Walton*, 368 U. S. 25 (1961). Consistent with these principles, lower federal and state appellate courts in many instances have upheld rules like that in question. See *Hackin* v. *Lockwood*, 361 F. 2d 499 (9th Cir., 1966); *Application of Schatz*, 80 Wash. 2d 604, 497 P. 2d 153 (1972); *Petition of Bolton*, 83 Nev. 265, 428 P. 2d 195 (1967); *Heninton* v. *State Board of Bar Examiners*, 60 N. M. 393, 291 P. 2d 1108 (1956); *Ralston*

v. *Turner*, 141 Neb. 556, 4 N. W. 2d 302 (1942); *Rosenthal* v. *State Bar Examining Com.*, 116 Conn. 409, 165 Atl. 211 (1933).

Indeed, petitioner does not question the constitutionality of Rule 3 as applied to one entering law school after its promulgation, but urges that its application to him as a graduate of an unapproved school prior to its promulgation unconstitutionally encroaches on vested rights (Petition at 6 et seq.). It is clear from this Court's decisions, however, that such a contention fails to present a question of sufficient substantiality to justify the issuance of the requested extraordinary writ. Even when an individual at a given time has a right to engage in a profession and in fact practices that profession, he is not constitutionally insulated from intervening statutory requirements in the nature of more stringent qualifications affecting his right to continue in such practice. *Dent* v. *West Virginia*, 129 U. S. 114, 122 (1889); *Reetz* v. *Michigan*, 188 U. S. 505, 510 (1903); *Watson* v. *Maryland*, 218 U. S. 173, 176 (1910). Certainly petitioner, who at no time previously practiced after graduating from law school in 1935,[2] is in no more favorable a position. See *Petition of Batten, supra*, in which a rule like that involved here was unsuccessfully challenged by an applicant who graduated from an unapproved law school prior to its promulgation.

Clearly, therefore, the contention that the challenged rule, in order to pass constitutional muster, must contain a grandfather clause in favor of those who graduated from unapproved law schools, many years ago, lacks the substance sufficient to justify the invocation of this Court's certiorari jurisdiction.

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[2] Petitioner admittedly made no attempt to seek admission to the bar of any jurisdiction between 1935 and 1971.

CONCLUSION

Upon the foregoing, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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April 12, 1972

Mr. Anthony Nigro
D. C. Court of Appeals
400 F Street, N. W.
Washington, D. C. 20001

Dear Mr. Nigro:

May I please request an application to take the June bar examination?

I took the examination last June and was not successful. Again in January I was unsuccessful.

I simply cannot permit this failure pattern to continue, and I trust I may be permitted to try again this summer.

Very truly yours,

DISTRICT OF COLUMBIA
COURT OF APPEALS

APR 14 1972